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FISCAL IMPACT STATEMENT

LS 7546

BILL NUMBER: SB 590

NOTE PREPARED: Feb 10, 2011

BILL AMENDED: Feb 10, 2011

SUBJECT: Illegal Immigration Matters.

FIRST AUTHOR: Sen. Delph

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill makes various changes to law concerning enforcement of federal immigration laws, checking the citizenship or immigration status of individuals, and related criminal matters, including the following:

- (1) Requiring that only English be used, with certain exceptions, in public meetings, public documents, by officers and employees of state or political subdivisions in performing their duties, and providing information communicated electronically by the state or a political subdivision.
- (2) Requiring the Office of Management and Budget to calculate the costs of illegal aliens to Indiana and make a written request to the Congress of the United States to reimburse the state for those costs.
- (3) Prohibiting governmental bodies from restricting or limiting certain actions by other governmental bodies with regard to information of the citizenship or immigration status of an individual.
- (4) Prohibiting a governmental body from limiting or restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law.
- (5) Requiring law enforcement officers to verify the citizenship or immigration status of individuals in certain situations.
- (6) Disallowing certain state income tax credits and deductions for individuals who are prohibited from being hired as employees, unless the employer participated in the E-Verify program.
- (7) Requiring the Superintendent of the Indiana State Police to negotiate the terms of a memorandum of agreement with the federal government so that State Police employees can be trained to enforce federal immigration and customs laws.
- (8) Requiring state agencies, political subdivisions, contractors with public contracts for services with a state or political subdivision, and certain business entities to use E-Verify and meet other requirements.
- (9) Allowing a state agency or political subdivision to terminate a public contract for services with a

contractor for breach of the public contract for services if the contractor knowingly employs an unauthorized alien.

(10) Prohibiting individuals from commencing day labor without completing an attestation required under federal law.

(11) Creating private rights of actions for certain violations.

(12) Establishing certain state crimes, including: (a) offenses related to identification numbers and documents; (b) false identity statement; (c) knowingly or intentionally transporting or moving an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law; and (d) knowingly or intentionally concealing, harboring, or shielding from detection an alien in any place, including a building or means of transportation, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law.

(13) Requiring law enforcement officers to impound motor vehicles for violations of crimes related to transporting, concealing, harboring, or shielding from detection aliens.

(14) Requiring a judicial officer in setting bail to consider that the defendant is a foreign national who has not been lawfully admitted to the United States as relevant to the risk of nonappearance.

(15) Allowing a law enforcement officer to arrest a person if the officer has probable cause to believe the person is an alien who meets certain criteria.

(16) Requiring the Indiana Economic Development Corporation (IEDC) and the Indiana Department of Agriculture to include certain agriculture jobs and wage rates on the corporation's and department's web sites.

(17) Requiring the Department of Correction (DOC) to verify the citizenship or immigration status of offenders.

(18) Requiring an agency, political subdivision, or person to verify the eligibility of an individual who applies for federal, state, or local public benefits.

(19) Requiring the Department of Workforce Development (DWD) to verify the status of an individual as a qualified alien through the Systematic Alien Verification for Entitlements program to determine the individual's eligibility for unemployment compensation benefits.

(20) Authorizing DWD to file civil actions to obtain the reimbursement of amounts paid as unemployment insurance benefits from employers that knowingly employed an unauthorized aliens.

Effective Date: July 1, 2011.

Explanation of State Expenditures: (Revised) *Summary: 287(g) Program:* Requiring the ISP to negotiate the terms of a memorandum of understanding with the U.S. Immigration and Customs Enforcement (ICE) will increase administrative expenditures. If approved for participation on the program, the ISP reports enforcement of the 287(g) requirements will increase state expenditures between \$1 M and \$5 M per year.

Agricultural Job Listing: The provisions of the bill that require the Indiana State Department of Agriculture (ISDA) and the Indiana Economic Development Corporation (IEDC) to provide a listing of critical vacant agricultural jobs is expected to increase IEDC expenditures by \$1,000 per year to maintain the Internet listing and by an indeterminable amount for the ISDA to compile lists of vacant agricultural positions. Although indeterminable at this time, the ISDA reported this requirement is outside of the Department's routine workload and would require additional resources. [Note: This information shall be updated as data is made available by the ISDA.]

Contracting Provisions: Requiring contracted employers to verify the work eligibility status of employees

may impact state expenditures on contracts if submitted requests for proposal cost estimates increase to reflect any change in hiring practices and/or wages paid by contractors. The impact on contracting expenses to the state are indeterminable.

Penalty Provisions: The bill also establishes new penalty provisions. To the extent these changes increase the number of offenders held in state correctional facilities, state expenditures will increase.

[*Note:* This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on state expenditures.]

Additional Information:

Office of Management and Budget (OMB): This bill will require the OMB to calculate an estimate of the total cost of illegal aliens to the state of Indiana and make a written request for reimbursement of these costs from the U.S. Congress by July 1, 2012. The OMB reports this requirement is expected to have no fiscal impact.

Indiana Economic Development Corporation and Indiana State Department of Agriculture: The bill requires the IEDC to maintain a list of agricultural jobs which have a critical need and their corresponding wages on the IEDC website. The list of these jobs and their wages is to be determined by the ISDA.

The IEDC reports the provisions of this bill will increase agency expenditures by \$1,000 to maintain the website requirement of the bill. The ISDA reports these provisions would require the Department to work in conjunction with the Migratory Labor Council to identify jobs that would need to be filled in the agricultural sector. This partnership would be sought to identify critical agricultural jobs throughout the state. The ISDA estimates the state agriculture sector utilizes approximately 25,000 migrant agricultural workers per year. Additionally, it was assumed the job listings required by the bill would be updated weekly and would hold information on current vacant positions. The impact to ISDA at the current time is indeterminable but expected to be significant. [*Note:* As information is provided by the ISDA, this fiscal note shall be updated.]

287(g) Program: Under the bill, the ISP would experience an increase in administrative expenditures to apply for the federal 287(g) program. If the memorandum of understanding with the U.S. Immigration and Customs Enforcement (ICE) agency is approved, the ISP estimates implementing the program requirements would cost anywhere between \$1 M and \$5 M per year. The expenditure amount would depend on the number of officers trained and additional number of persons incarcerated for a federal immigration or customs law violation.

Currently, when a State Police officer makes an arrest, the offender is held in a place of detention within the jurisdiction of the arrest. The place of detention within the jurisdiction can include state correctional facilities or local jails. Depending on where 287(g)-trained officers make an arrest and where the arrested individual is taken for holding, state expenditures on detention can increase. Actual increases in state detention expenditures will depend on the number of undocumented aliens identified and taken for holding, offenses committed by the arrested, and where pilot program-trained officers take identified undocumented aliens. The actual increase in expenditures is indeterminable.

Additionally, officers trained under the pilot program may have a responsibility to report criminal unauthorized aliens to the U.S. Department of Homeland Security or Immigration and Customs Enforcement

for deportation. If this is the case and criminal undocumented aliens are either deported or are held temporarily for deportation hearings, then the state may not experience the full financial burden of detaining offenders for the duration of their sentence if convicted of felony offenses. State expenditures for holding criminal unauthorized aliens in state facilities will depend on federal action regarding deportation hearings.

(Revised) *Department of Local Government Finance (DLGF)*: The bill requires the DLGF to adopt rules that will govern political subdivision administration of public benefits. The increase in workload is expected to be minimal.

(Revised) *Restrictions on Public Benefits*: The bill provides that individuals who are not lawfully present in the United States are ineligible for any federal, state, or local public benefit, which also includes (1) the resident tuition rate, and (2) a post-secondary award, scholarship, grant, or financial aid from a state educational institution. As a requirement of receiving a public benefit, an applicant would be required to execute an affidavit stating the individual is a United States citizen or a qualified alien and the filed affidavit is to be maintained for at least 5 years.

Indiana Code currently specifies that illegal immigrants are not eligible for Temporary Assistance for Needy Families (TANF), Medicaid, and Unemployment Insurance. Currently, for any benefit administered by the state but funded in full or in part by the federal government, the SAVE program is used to verify the lawful presence of benefit applicants.

The bill could potentially reduce the number of persons in the state who are eligible for state or local benefits that do not receive any federal funding (including education benefits administered by the State Student Assistance Commission of Indiana). This could result in savings for the state or allow the state to redirect the funds to other persons needing services within a program for which services were not provided under the bill.

(Revised) *Systematic Alien Verification for Entitlements (SAVE) System Use for Unemployment Benefits*: Under the bill, the Department of Workforce Development (DWD) is required to use the SAVE program to verify individuals who are not citizens or nationals of the United States as a condition of receiving unemployment benefits. Currently, DWD processes all applicants for unemployment benefits through the SAVE program. Fees associated with SAVE verification are paid by DWD.

The bill also will allow the DWD to file civil actions against employers to obtain reimbursement for unemployment insurance benefits paid to unauthorized aliens. However, as the DWD currently utilizes the SAVE program to verify an applicant's eligibility for unemployment benefits, this provision is expected to have no fiscal impact, either in increasing reimbursement provided to the DWD or civil court cases to collect reimbursement. Further, the ability of the DWD to file civil suits to collect reimbursement of unemployment benefits would require federal approval.

Department of Correction (DOC): Currently, DOC verifies the legal status of offenders committed to their facilities. This is done in part to apply for expense reimbursement under the State Criminal Alien Assistance Program (SCAAP). DOC currently notifies the U.S. Immigration and Customs Enforcement (ICE) and the U.S. Social Security Administration (SSA) when an offender is determined to be illegally present in the United States.

DOC reports there were 442 suspected unauthorized aliens in DOC facilities in FY 2008. As of November 2, 2009, 93 of these offenders were still held in DOC facilities. The per diem cost to house these individuals

was calculated at \$55.33. Total annual costs to DOC to house the 442 unauthorized aliens during FY 2008 were approximately \$8.9 M. The cost of maintaining the remaining 93 unauthorized alien criminal offenders is approximately \$1.9 M per year. [Note: This data was current as of 2009. As information is provided by the DOC, this information shall be updated.]

State Contractor E-Verify Requirement: The bill states that contractors are liable to the contract-issuing state agency or political subdivision for any damages that may result from a contract cancellation due to the illegal employment of unauthorized aliens. This provision will minimize any increase in expenditures that may result from the cancellation of a contract. To the extent that a contractor challenges the contract cancellation, the workload of the respective state agency and the Attorney General may increase to defend the state.

Additionally, as a condition of receiving a state grant or award in excess of \$1,000, businesses would be required to participate in the E-Verify program. This provision may impact state expenditures to the extent some businesses elect not to participate in the E-Verify program. The actual impact on state expenditures is indeterminable.

The E-Verify program is a free Internet-based system that allows employers and state agencies to verify the legal working status of new hires in seconds. Requiring state agencies and state contractors to use the E-Verify system will not increase state expenses, but will slightly increase workload to ensure all employees hired after the effective date are processed. Increases in workload are expected to be minimal due to the processing time necessary for requests.

(Revised) *Penalty Provisions:* The bill creates the following penalty provisions:

- (1) Making a false identity statement, a Class A misdemeanor.
- (2) Knowingly or intentionally transporting or moving an alien for commercial advantage or financial gain, a Class A misdemeanor, and if involving 9 or more aliens, a Class D felony.
- (3) Knowingly or intentionally concealing, harboring, or shielding an alien from detection, a Class A misdemeanor, and if involving 9 or more aliens, a Class D felony.
- (4) Knowingly or intentionally offering in writing, accepting, or recording a consular identification for any public purpose commits a Class C infraction, but this offense can be a Class B infraction for a second offense or a Class A infraction for a third or subsequent offense.
- (5) Knowingly or intentionally offering in writing, accepting, or recording an individual taxpayer identification number as a valid form of identification commits a Class C infraction for the first offense, a Class B infraction for a second offense, or a Class A infraction for a third or subsequent offense.
- (6) Knowingly or intentionally making a false, fictitious, or fraudulent statement in an affidavit required for public benefits (federal, state, or locally funded in whole or in part), a Class D felony.

Depending on mitigating and aggravating circumstances, a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor. The average length of stay in DOC facilities for Class D felony offenders, is approximately 10 months.

The average expenditure to house an adult offender was \$20,194 in FY 2009. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner.

Background Information:

SAVE Program and Associated Fees: In 2003, under the Immigration Reform and Control Act of 1986 (IRCA), the U.S. Department of Homeland Security was required to establish a system for verifying the immigration status of noncitizen applicants for certain types of federally funded benefit programs (including Unemployment Compensation), and to make this system available to federal, state, and local benefit-issuing agencies and institutions that administer such benefits. IRCA mandates overseeing agencies to participate in the verification of an applicant's immigration status.

As enacted by the federal government, effective October 1, 2008, a uniform rate of \$0.50 will apply to each SAVE request submitted electronically with an additional \$0.50 charge if the case is referred for additional verification. A rate of \$2.00 will apply to each initial manual verification request submitted via the paper-based form.

(Revised) *Restrictions on Public Benefits:* Currently, the Division of Family Resources (DFR) requires a declaration of citizenship and immigration status during the application process for public benefits. Individuals undergo an interview with program administrators to determine legal status of the applicant. Applicants are required to sign an Application for Assistance Client Certification form that certifies under penalty of perjury that all information about citizenship status is complete and accurate to the best of the applicant's knowledge. Any inability or unwillingness to complete the application results in the individual being considered an undocumented immigrant for public benefits.

Explanation of State Revenues: *Office of Management and Budget:* Under the bill, the Office of Management and Budget is required to calculate the total costs of illegal aliens in the state of Indiana and request reimbursement for these costs from the United States Congress. It is unknown if this request will yield any federal revenue for reimbursement. However, to the extent it does, state revenue will increase. Currently, reimbursement for some of the costs of illegal aliens is provided from the State Criminal Alien Assistance Program (see Background Information, below).

(Revised) *E-Verify Requirement:* For the purposes of calculating Indiana Individual and Corporate Adjusted Gross Income (AGI) tax and Financial Institutions Tax (FIT) liabilities, this bill requires taxpayers to add back the amounts of any trade or business deductions allowed under the Internal Revenue Code for wages, reimbursements, or other payments made for services provided in Indiana by an employee if the employee was prohibited from being hired under 8 U.S.C. 1324a. However, the add back would not apply to businesses enrolled and participating in the E-Verify program. The impact of these changes is indeterminable and would depend upon the extent that these amounts are being excluded from federal taxable income. These changes are effective for taxable years beginning July 1, 2011, so the fiscal impact could commence in FY 2012. Revenue from the AGI tax and the FIT is deposited in the state General Fund.

The bill also provides that individuals who are prohibited from being hired under 8 U.S.C. 1324a cannot be included for the purposes of determining a business's Economic for a Growing Economy (EDGE) tax credit amount. However, this would not apply to businesses enrolled and participating in the E-Verify program. Under current statute, businesses that create new investment and jobs in Indiana or undertake projects to retain existing jobs in Indiana are eligible for EDGE tax credits. EDGE tax credit amounts are determined by the IEDC and awarded for up to 10 years. EDGE tax credits may be taken against a taxpayer's AGI tax, Insurance Premiums Tax, or FIT liabilities. Individual and corporate taxpayers claimed about \$45 M in EDGE tax credits for tax year 2008.

(Revised) *Civil Court Fee Revenue*: The bill provides court actions where contractors and subcontractors feel their contracts have been wrongfully terminated must proceed through civil court. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase.

(Revised) *Penalty Provisions*: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. Judgments for infractions are deposited into the state General Fund.

The maximum fines by offense are as follows: (1) a Class A misdemeanor is \$5,000, (2) a Class D felony is \$10,000, (3) a Class C infraction is \$500, (4) a Class B infraction is \$1,000, and (5) a Class A infraction is \$10,000.

[*Note*: This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on state revenue.]

Background Information: Under the federal State Criminal Alien Assistance Program (SCAAP), the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. During FFY 2009, the DOC received a total of \$1,148,637 in SCAAP funds.

Explanation of Local Expenditures: E-Verify Requirement: As a condition of receiving a local grant or award in excess of \$1,000 or a property tax exemption, businesses would be required to participate in the E-Verify program. This provision may impact local expenditures to the extent that some businesses elect not to participate in the E-Verify program. The actual impact on local expenditures is indeterminable.

Day Labor Employment: Law enforcement officers would be required to submit a complaint to the U.S. ICE regarding individuals who violate provisions regarding the employment of day laborers. This is expected to increase the workload of local law enforcement officers.

Court Caseload: Court caseload will increase to the extent that local prosecuting attorneys seek action against employers who have employed unauthorized aliens. The bill also establishes court procedures and requirements for cases involving the employment of unauthorized aliens. Increases in court caseload are indeterminable.

Safe Harbor: This bill will increase court workload as well as the workload of law enforcement agencies and local government officials to defend their respective government units and law enforcement agencies against court action for enacting a safe harbor policy. Actual increases are indeterminable.

Public Employer and Public Contractor Provision: (See also *Explanation of State Expenditures*, above.) To the extent that contractors and subcontractors feel a contract was wrongfully terminated and seek civil redress, local expenditures would increase to defend their interests in court.

(Revised) *Restrictions on Public Benefits*: The bill provides that individuals who are not lawfully present in the United States are ineligible for any local public benefit. As a requirement of receiving a public benefit, an applicant would be required to execute an affidavit stating the individual is a United States citizen or a qualified alien and the filed affidavit is to be maintained for at least 5 years. The bill could potentially reduce the number of persons in the state who are eligible for local benefits. This could result in savings for the unit

or allow the unit to redirect the funds to other persons needing services within a program for which services were not provided under the bill.

(Revised) *Penalty Provision*: A Class A misdemeanor is punishable by up to one year in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase.

[*Note*: This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on local expenditures.]

Explanation of Local Revenues: *Court Fee Revenue*: If additional court actions occur, local governments would receive revenue from a portion of the \$100 civil costs fee that is assessed in a court of record and additional fees which may be collected at the discretion of the judge and depending upon the particular type of case.

(Revised) *E-Verify Requirement*: Some of this bill's provisions may impact taxable income. The impact on counties imposing local option income taxes is indeterminable and would vary.

[*Note*: This fiscal note does not include a secondary analysis of the potential effects stricter enforcement of unauthorized immigration law may have on local revenue.]

Background Information: Under the federal State Criminal Alien Assistance Program, the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. SCAAP payments are calculated using a formula that provides a relative share of funding to jurisdictions that apply and is based on the number of eligible criminal aliens as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction's general fund.

The counties that received payments from the SCAAP program in FFY 2009 and the total amounts received are shown in Table A. For FFY 2008, Indiana counties received \$196,332 from the SCAAP program.

| Table A: 2009 County SCAAP Awards | |
|-----------------------------------|------------------|
| County | Amount Received |
| Allen | \$38,592 |
| Cass | \$7,854 |
| Grant | \$6,420 |
| Hamilton | \$24,030 |
| Hendricks | \$10,502 |
| Johnson | \$7,719 |
| Marion | \$75,402 |
| Noble | \$11,340 |
| Porter | \$2,486 |
| Total | \$184,345 |

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources: Tim Brown, DOC; Indiana Sheriff's Association; ICE; Matt Light and Tom Bodin, Office of the AG; Captain Sherry Beck, ISP; Sean Keefer, DOL; Joshua Richardson, DWD; Anthony Hahn, ISDA; Eric Shields, IEDC; Chris Atkins, OMB; OFMA Income Tax Databases.

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